



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

KING & SPALDING
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036-4003

COPY MAILED

FEB 06 2008

OFFICE OF PETITIONS

In re Application of :
Rozhon et al. :
Application No. 09/712,033 : ON APPLICATION
Filed: November 14, 2000 : FOR
Atty Docket No. 13784.105005 : PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR CORRECTION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed November 16, 2007¹. Applicants assert that the initial determination of patent term adjustment mailed November 7, 2007 omits the period of adjustment under Rule 703(b).

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is ordinarily required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Moreover, even where as here a request for continued examination (RCE) has been filed, it is appropriate to hold a decision in abeyance. The RCE cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment. Nonetheless, the calculation of the period of adjustment under Rule 703(b) occurs with knowledge of

¹ This application was timely filed with payment of the Issue Fee on November 16, 2007.

the actual date the patent is to be issued. Furthermore, this calculation is not reflected in the initial determination mailed with the notice of allowance, but rather is reflected in the revised patent term adjustment indicated in the patent. Accordingly, it is appropriate to render any decision on this issue after issuance of the patent and with respect to the revised patent term adjustment indicated in the patent.

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", written over the printed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions